

### **REMARKS/ARGUMENTS**

The office action of December 3, 2003 has been carefully reviewed and these remarks are responsive thereto. By the present amendment, Applicant amends claims 7, 14, and 21; cancels claims 1-6, 8-13, and 15-20; and adds new claims 22-39. Claims 7, 14, and 21-39 remain pending. Reconsideration and allowance of the instant application are respectfully requested.

#### ***Rejections Under 35 U.S.C. § 102***

Claims 1-21 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Van Schaack *et al.* (U.S. Pat. No. 6,652,283, hereinafter Van Schaack). Applicant respectfully traverses this rejection for at least the following reasons.

Applicant has canceled claims 1-6, 8-13, and 15-20, rendering this rejection moot with respect to these claims. Applicant has amended claims 7, 14, and 21 by rewriting these claims in independent form. Thus, claims 7, 14, and 21 have changed in form, not substance.

In order to reject a claim as anticipated under 35 U.S.C. § 102, a single prior art reference must teach every aspect of the claimed invention. See, e.g., MPEP § 706.02. Each of the independent claims 7, 14, and 21 recite, *inter alia*:

- (iv) when the user's response in step (ii) is correct, repeating steps (i) and (ii) for the first question when the weight meets a predetermined criteria, wherein the weight comprises an amount of time in which the user responded to the question.

The office action only provides a conclusory indication and a generalized broad statement without support that Von Schaack describes a system and method whereby, when the user's response in step (ii) is correct, repeating steps (i) and (ii) for the first question when the weight meets a predetermined criteria, and the weight comprises an amount of time in which the user responded to the question. However, Von Schaack provides no such support.

Instead, Von Schaack states:

The system 10 according to preferred embodiments of the present invention monitors not only the correctness of the user's response but also the user's performance, which is the ability to

evaluate accurately whether they know the correct response and the incorrect responses. The system 10 according to preferred embodiments of the present invention also measures the time required for the user to make such evaluation about the correct response and incorrect responses.

Von Schaack, Col. 18, Lines 57-65. However, Von Schaack goes on to state:

Instead of using the measured performance to generate sequences of perceived known and unknown items *which is not done in any of the preferred embodiments of the present invention*, the quantitatively measured performance is fed back and presented, either graphically, auditorily, kinesthetically, or otherwise, to the user, preferably along with the score of accuracy of recall, to provide information to the user about his metacognitive skills in this learning environment and other learning environments, enabling the user to improve how he monitors and controls how he learns and to become a better learner.

Von Schaack, Col. 18, Line 66 – Col. 19, Line 9 (emphasis added).

Thus, not only does Von Schaack not use the measured amount of time in which a user answered a question to determine whether to re-present the question to the user, as is recited in claims 7, 14, and 21, but Von Schaack teaches away from the present invention by indicating that none of the preferred embodiments of Von Schaack use the measured performance to generate sequences of known and unknown items. Von Schaack uses the measured performance of the user “to provide information *to the user* about his metacognitive skills in this learning environment and other learning environments, enabling the user to improve how he monitors and controls how he learns and to become a better learner.” Von Schaack, Col. 19, Lines 5-9 (emphasis added).

Thus, because Von Schaack at least does not teach or suggest “when the user’s response in step (ii) is correct, repeating steps (i) and (ii) for the first question when the weight meets a predetermined criteria, wherein the weight comprises an amount of time in which the user responded to the question,” claims 7, 14, and 21 are not anticipated by Von Schaack under 35 U.S.C. 102(e), and the rejection is traversed.

***New Claims***

Applicant has added new claims 22-39. Support for the new claims can be found in the specification as filed at least at paragraphs [20] – [21]. Applicant respectfully submits that the new claims are each allowable based on the allowability of their respective base claims.

In addition, with respect to claims 22, 23, 28, 29, 34, and 35, neither Von Schaack nor any other art of record describes the use of average amounts of time for response to a question to determine whether to re-present the question to the user.


With respect to claims 24, 25, 30, 31, 36, and 37, neither Von Schaack nor any other art of record describes that the amount of time in which the user responded to the first question provides an indication that the user was guessing.

**CONCLUSION**

All rejections having been addressed, applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. However, if for any reason the Examiner believes the application is not in condition for allowance or there are any questions, the examiner is requested to contact the undersigned at (202) 824-3153.

Respectfully submitted,

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